

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-004-13-1-5-00271-16
45-004-15-1-5-01815-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-15-153-002.000-004
Assessment Years: 2013 & 2015

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated a 2013 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on November 20, 2015. On January 6, 2016, Petitioner filed a Form 131 petition with the Board.
2. Petitioner initiated a 2015 appeal with the PTABOA. The PTABOA issued notice of its final determination on August 16, 2016. On October 3, 2016, Petitioner filed a Form 131 petition with the Board.
3. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
4. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on May 21, 2018. Neither the ALJ nor the Board inspected the property.
5. James Nowacki, Petitioner, was sworn and testified. Robert W. Metz and Gordona Bauhan, Lake County Hearing Officers, were sworn as witnesses for the Respondent.

Facts

6. The subject property is a vacant residential lot located at 2305 Connecticut Street in Gary.
7. The assessed value was \$2,100 for each year at issue.

8. Petitioner requested an assessed value of \$1,100 for each year.¹

Record

9. The official record contains the following:

a. Exhibits:

Petitioner Exhibit 1: Property record card (“PRC”) for 2009-2013,
Petitioner Exhibit 2: PRC for 2011-2015,

- b. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeal; (2) all orders, notices, and memoranda issued by the Board or the ALJ; (3) the digital recording of the hearing; and (4) these Findings and Conclusions.

Burden

10. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
11. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
12. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).

¹ Petitioner claimed a value of \$900 on the Forms 131 for each year at issue but indicated a value of \$1,100 at the hearing.

13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. Respondent testified that the 2012 assessed value was \$2,100. The PRC, however, shows a value of \$3,300. Thus, the assessed value either decreased between 2012 and 2013 or stayed the same. Therefore, Petitioner has the burden of proof for 2013. The assessed value was the same for 2014 and 2015. Consequently, Petitioner also has the burden of proof for 2015.

Summary of Parties' Contentions

15. Petitioner's case:
 - a. Petitioner contends the property is an unbuildable lot in an area with no utilities, no sidewalks, and no potential for development. Petitioner claims he would value the property at \$1,100. *Nowacki testimony.*
 - b. Petitioner contends there are numerous errors on the PRC. For example, he contends that it shows he purchased the property in 1982 for no remuneration which he claims is inaccurate. The PRC also shows that the property has utilities, sidewalks, and paved roads. Petitioner contends that the property has none of those characteristics. Furthermore, the PRC shows that the neighborhood life cycle stage is "static." Petitioner contends that the fluctuating assessed values indicate that the neighborhood is not static. In fact, the decrease from \$3,300 in 2012 to \$2,100 for 2013, 2014, and 2015 indicates the area is declining. *Nowacki testimony; Pet'r Exs. 1 & 2.*
 - c. Petitioner contends that the property is in a TIF district. He claims that TIF districts are where all of the money that should go to fire, police, schools, and libraries is misspent. *Nowacki testimony; Pet'r Exs. 1 & 2.*
 - d. Petitioner contends that Respondent has fraudulently used the assessment process to offset the decrease in the valuation of U.S. Steel and that the loss of assessed value was made up "on the backs of residents of Gary." *Nowacki testimony.*
 - e. Petitioner contends that Respondent convened a blue-ribbon panel to address the errors in the valuation in Calumet Township. He contends that Respondent said that, if the errors are corrected, "there may not be enough money to run the city." The tax employees, therefore, have a vested interest in "fraudulently maintaining and increasing the assessed valuations." *Nowacki testimony.*
16. Respondent's case:

- a. Respondent contends that the assessment was stable from 2013 through 2015, not erratic as Petitioner suggests. He further contends that there is no evidence to support Petitioner's value and requests no change in the assessments. *Metz testimony*.

ANALYSIS

17. Petitioner failed to establish a prima facie case for a reduction in the assessed values. The Board reached this decision for the following reasons:
 - a. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance ("DLGF") has defined as the property's market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property's market value-in-use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice ("USPAP") will often be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
 - b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the 2013 and 2015 assessments at issue in these appeals was March 1 of the assessment year. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. Petitioner contends the property should be assessed at \$1,100 for each year at issue. Petitioner presented no evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
 - d. Petitioner contends there are numerous errors on the PRC, specifically regarding the date of ownership and the characteristics of the property. Petitioner did not show how any changes to those characteristics or the date of ownership would affect the market value-in-use of the property. Simply contesting the methodology is insufficient to make a prima facie case of an error in the assessment. *Eckerling v. Wayne Co. Ass'r*, 841 N.E. 2d at 647, 677 (Ind. Tax Ct. 2006). To successfully make a case, Petitioner needed to show the assessment does not accurately reflect the

subject property's market value-in-use. *Id. See also P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead on determining what the correct value actually is.)

- e. Petitioner failed to make a prima facie case for a reduction in the assessment for either 2013 or 2015. Where the petitioner has not supported its claim with probative evidence, the respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

- 18. Petitioner failed to establish a prima facie case for a reduction in the assessed values. The Board finds for Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013 and 2015 assessments should not be changed

ISSUED: August 16, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.